No. 92-1515

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

JOSEPH ALBERICI AND THERESA ALBERICI, H/W,
Petitioners

v.

UNITED STATES GOVERNMENT, et al.,
Respondent

JOSEPH ALBERICI,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

CONSOLIDATED PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

I. Whether the United States Court of Appeals for the Third Circuit erred in denying Petitioner Joseph Alberici's request for a Writ of Errors Coram Nobis.

II. Whether the United States Court of Appeals for the Third Circuit erred in affirming the dismissal of our RICO, Civil Rights and State Law claims.

III. Whether the judges should have recused themselves for the obvious, gross appearances of impropriety, partiality, conflict of interest bias and/or prejudice, and the interaction of the judges violated the judicial code and Petitioners' most fundamental rights.

IV. Whether the Writ of Errors, Coram Nobis case should have been transferred to another jurisdiction when the Appellant requested it in their Brief to the U.S. Court of Appeals.

PARTIES TO THE PROCEEDING

Joseph Alberici and Theresa Alberici,

Petitioners

Safeguard Mutual Insurance Company

PA. Insurance Guaranty Association

General Accident Fire and Life Insurance

Corp., LTD.

Insurance Placement Facility of Pennsylvania

Quaker State Mutual Insurance Group

Home Mutual Insurance Company of Pennsylvania

Joseph T. LaBrum, Jr., Judge

Duane, Morris & Hechscher's Law Firm

Hugh M. Emory, Esquire

Michael O'Hayer, Esquire

Commonwealth of Pennsylvania

Burough of Darby, Pennsylvania

Thomas J. Powers

Kenneth J. Boyden, Esquire

United States Government, Respondents

STATEMENT OF THE CASE

Argument:

Whether the United States Court of Appeals for the Third Circuit erred in denying Petitioner Joseph Alberici's request for a Writ of Errors Coram Nobis.

Whether the United States Court of Appeals for the Third Circuit erred in affirming the dismissal of our RICO, Civil Rights and State Law claims.

Whether the judges should have recused themselves for the obvious gross appearances of impropriety, partiality, conflict of interest, bias and/or prejudice and the interaction of the judges violated the judicial code and Petitioners' most fundamental rights.

Whether the Writ of Errors, Coram Nobis case should have been transferred to another jurisdiction when the Appellant requested it in their Brief to the U.S. Court of Appeals.

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CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the Constitution of the United States provides as follows:

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be signed."

The Fifth Amendment to the Constitution of the United States provides as follows:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in

any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Sixth Amendment to the Constitution of the United States provides as follows:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

The Fourteenth Amendment to the Constitution of the United States provides as follows:

Section 1 of the Fourteenth Amendment is the source of many civil rights, and prohibits states from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States; from depriving any person of life, liberty, or property, without due process of law; and from denying to any person within their jurisdiction the equal protection of the laws. There are thus three distinct provisions guaranteeing the rights of persons and property: (1) the privileges and immunities clause; (2) the due process clause; and (3) the equal protection clause. The Amendment makes no attempt to enumerate the rights it was designed to protect. It speaks in general terms, and those are as comprehensive as possible. Its language is prohibitory; but every prohibition implies the existence of rights and immunities. The commands of the Amendment are addressed, however, only to the state or to those acting

under color of its authority. The Amendment itself erects no shield against merely private conduct, however, discriminatory or wrongful. Similarly, actions of the Federal Government and its officers are beyond the purview of the Amendment.

The protection extended to citizens of the United States by the privileges and immunities clause includes those rights and privileges which, under the laws and Constitution of the United States are incident to citizenship of the United States, but does not include rights pertaining to state citizenship and derived solely from the relationship of the citizen and his state established by state law. The clause protects all citizens against abridgment by states of rights of national citizenship as distinct from the fundamental or natural rights inherent in state citizenship. The Constitution nowhere defines the meaning of the words "citizen of the United States."

Also, the rights of national citizenship have never been completely listed by the Supreme Court.

The due process clause was intended, in addition to other guaranties or private rights, to give increased security against arbitrary deprivation of life or liberty, or the arbitrary spoilation of property. It adds nothing to the rights of one citizen as against another; it simply furnishes an additional guaranty against any encroachment by the state upon the fundamental rights which belong to every citizen as a member of society. The term "due process of law" refers to that law of the land in each state which derives its authority from the inherent and reserved powers of the state exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions. The guaranty of due process demands only that the law shall not be

unreasonable or capricious, and that the means selected shall have a reasonable and substantial relation to the object sought to be obtained. The due process clause does not prohibit action by a private individual, unless the state, in any of its manifestations, has in some way involved itself in the actions of an individual to some significant extent.

The equal protection clause of the Fourteenth Amendment furnishes a distinct right, separate from and independent of the rights protected by the privileges and immunities clause. Rights under the equal protection clause arise only where there has been involvement of the state or one acting under its authority. It does not add anything to the rights which one citizen has under the Constitution against another. Because the virtue of the right to equal protection of the laws could lie only in the breadth of its application, its

constitutional assurance was reserved in terms whose imprecision was necessary if the right were to be enjoyed in the variety of individual-state relationships which the Amendment was designed to embrace. Not every denial of a right conferred by state law involves a denial of the equal protection of the laws within the meaning of the Fourteenth Amendment, even though the denial of the right to one person may operate to confer it on another. The element of intentional or purposeful discrimination is necessary to establish a denial of equal protection of the laws. This may appear on the face of the action taken with respect to a particular class or person, or it may be shown by extrinsic evidence establishing a discriminatory design to favor one individual or class over another. A discriminatory purpose is not presumed, and must be clearly shown.

STATUTORY PROVISIONS INVOLVED

The United States Code, Act of June 25, 1948, C.645, 62 Stat. 763; May 24, 1949, C.139 §34, 63 Stat. 94, 18 U.S.C. §1341, provides as follows:

"§1341. Frauds and swindles. Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the

Post Office Department, or takes or receives therefrom, any such matter of thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both."

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

JOSEPH ALBERICI AND THERESA ALBERICI, H/W

v.

UNITED STATES GOVERNMENT, et al.

JOSEPH ALBERICI

v.

UNITED STATES OF AMERICA

CONSOLIDATED PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRIUIT

Pro Se Petitioners Joseph Alberici and Theresa Alberici hereby petition for a writ of certiorari to review the judgments of the United States Court of Appeals for the Third Circuit in connection with (i) the denial of Petitioner Joseph Alberici's Petition for Writ of Error Coram Nobis, (ii) the denial of an appeal from the dismissal of a rehearing petition on behalf of Joseph and Theresa Alberici, alleging violations of the Federal RICO and Civil Rights laws, and pendant state law claims, and that part of the order of the Third Circuit Court of Appeals finding that our claims were frivolous. The summary judgment against Petitioner Theresa Alberici has previously been overturned on two separate occasions. Petitioner Theresa Alberici is joining in the Petition only with respect to the RICO, Civil Rights and state law claims of the rehearing petition, and that part of the order of the Third Circuit Court of Appeals finding that our prior

appeal in the RICO, Civil Rights and state law claims suit was frivolous, and is not a party to the Petition with respect to the Writ of Error Coram Nobis.

OPINIONS BELOW

A copy of the Order of the United States District Court of Pennsylvania, dated March 13, 1992, and the Amended Order of Court issued March 20, 1992, is contained in Appendix A. Copies of the Order of the Court of Appeals for the Third Circuit dated October 6 and November 5, 1992 dismissing the appeal from the orders contained in Appendix A is contained in Appendix B. A copy of the final Order entered April 7, 1992, by the United States District Court denying Petitioner Joseph Alberici a Writ of Error Coram Nobis is contained in Appendix C. A copy of the Judgment Order dated November 24, 1992 wherein the Court of Appeals for the Third Circuit affirmed the judgment of the

District Court contained in Appendix C is contained in Appendix D.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

STATEMENT OF CASE

This is a consolidated Petition for Certiorari arising from a long term travesty of justice involving two separate legal matters which arise from circumstances surrounding the agreement to purchase a commercial building and the fight between Petitioners, as policyholders, and their insurance companies for insurance proceeds which became payable upon damage to the building. As noted by distinguished lawyer and author William M. Shernoff, "(m)any policyholders settle a claim for less than is due them as a way of life. Rather than being rescued by the heroic images used by insurance companies such as Paul Revere, John

Hancock, or Thomas Jefferson, the policyholder becomes victimized by accusations. He or she is charged with dishonesty, arson, malingering, and fraud." Payment Refused, Richardson & Steirman, Inc., 246 Fifth Avenue, New York, New York, 10001, Copyright 1986, ISBN 0-931933-14-5. To me, and to my wife and family, Mr. Shernoff's words really hit home because this has been our life story since 1978. It was in 1978 that we filed suit against our insurance companies for the proceeds of insurance policies which became payable as a result of a fire which damaged a building we owned. The fire occurred before we purchased the building, but our lawyer told us the agreement we signed placed the risk of loss on us. Our insurance brokers advised us on insurance, and because of some pricing schedules, we were told it was cheaper for us to purchase more insurance than we needed because we could get it for less. Our

coverage was about $450,000 of insurance on the land and building plus $50,000 for the contents. A binder for $100,000 of insurance was due to expire in a couple of days, leaving only $350,000 of insurance. The building was a movie theatre plus parking, and we intended to use it for a catering business or restaurant. At the time, our son wanted to be a chef. He has since become one, a fine one. We purchased the building from a distressed owner for what we believed was much less than the fair market value. Prior to closing, the fire occurred. We were forced to close the transaction. Afterwards we were approached about the insurance proceeds by an adjuster, and we decided to pursue the insurance. As naive fire insurance policyholders, we did not make a fire loss claim because we expected to hear from the insurance companies, because we were told they would contact us. The adjuster approached us at the site October 31, 1977;

13 weeks had passed since the 30-day deadline contained in the insurance policies. If I had a scheme to defraud anyone, I would have claimed a loss immediately. Eventually I, Joseph Alberici, was indicted for mail fraud. The indictment alleged I had the building burned so that I could collect insurance proceeds. The federal prosecutors produced witnesses that said they burned the building for me. These witnesses said they used several 55-gallon drums of naphtha and left one at the theatre. Although the Pennsylvania State Police and local crime labs had some type of records about finding a 55-gallon drum, they said the drum contained phenol. Phenol, from what I understand, is an agent for cleaning that would not be uncommon to find in a movie theatre. I don't know what it was. We had not purchased the theatre yet. No one ever found any explosive material; no one ever found a destructive device. The state investigators confirmed

this in writing, but the federal prosecutors had some witnesses who testified that they burned the theatre. The one witness, Joseph DiTizio, who the trial judge found to be the only one who provided credible evidence had his family relocated. He received $5,000.00 plus expenses for his lying testimony. The federal government's alleged arsonists, Vincent Fardella and Joseph DiTizio, were indicted on three counts November 10, 1981. Count Two was for interstate transportation in aid of racketeering arson. The indictment states: "defendants did travel and cause travel in interstate commerce, from the State of New Jersey to the State of Pennsylvania, with the intent to establish, promote, manage, carry-on and to facilitate the promotion, management, establishment and carrying-on of an unlawful activity, the unlawful activity being arson, in violation of the laws of the State of Pennsylvania, in violation of Title 18, United States Code,

Sections 1952 and 2.

This occurred nine months before the Statute of Limitations on arson expired on August 6, 1982. It's incredible that the Commonwealth of Pennsylvania and Delaware County stopped investigating the arson on September 28, 1978, according to State Trooper DiGiamberdini's report.

(1) The State and County officials knew from the appearance of the building after the fire that no structural damage was done.

(2) They knew no damage was done to the adjoining homes and automobiles. The windows therein were not cracked or shattered.

The alleged arsonists, one in the building and the other outside the front door waiting to pick him up in the get-away car when the explosion alleedly occurred, did not get hurt. They would have been exterminated if the explosion had occurred with the use of

75-gallons minimum or 110-gallons maximum of naphtha (a volatile explosive) according to Agent Lory's hearsay report. It's no wonder Lory's report given to the A.T.F. lab in 1979 and the analysis of it are missing since 1986.

A serious question, it was public knowledge by the many news articles that appeared, because I was an unindicted co-conspirator -- what happened to the State and County officials responsible for a state crime? They were fully silent, besides not interviewing or questioning them or me about a serious crime. This is a violation of my due process and an obstruction of justice. Later my conviction was overturned. Later still, my conviction on Count Five, was reinstated. After my conviction was reinstated on Count Five, the gross inconsistencies of the alleged arsonists and other government witnesses lead me to wonder if the alleged arsonists really did burn the

building, and if they did, did they do it the way they said they did. I mean, if they had, I certainly hadn't hired them. I consulted a chemist at the University of Pennsylvania in Philadelphia. This consultant advised me that if 110-gallons of naphtha were lit in the manner described by the witnesses, they would have been incinerated and a gaping hole left in the ground. But although we had $450,000 of insurance (the government prosecutors referred to it as a "cool half million"), our claim wasn't even for half of that. Not only was there no gaping hole in the ground, there were witnesses left to tell about it. No structural damage was found. I told this to both the District Court and the Appeals Court, but they said they couldn't help since my lawyer could have called this chemist at the trial but he didn't. This same United States Court of Appeals said my lawyer, who didn't use this chemist at trial, was not negligent. Something just didn't

seem right. If my lawyer investigated these witnesses, he must have found out about the lies the witnesses told. I think any other tactic which ignores this is negligence. I know I am innocent. Since then, I have been investigating and pursuing the same goal in three different lawsuits.

This Petition for Certiorari is my last chance at restoring my good name and that of my family. That was ruined when the Honorable Judge Pollak noted that although it seems that I had led an exemplary life, I had been convicted. He noted that he didn't know if he would have reached the same conclusion as did the jury. Ironically, this, my last grasp, comes at a time when all three of our lawsuits (with the exception of Petitioner Theresa Alberici's claim for insurance as an innocent co-insured) have been turned down by the Pennsylvania Supreme Court and the United States Court of Appeals, and all within months of each other. The resolution has

been that I stand convicted of Count Five. It sent me to prison; it has kept insurance monies from me and my wife; it has ruined our lives. All of this travesty does not violate our rights, we were told, because I stand convicted of Count Five. Count Five, as a technical matter, has problems, too. The Grand Jury indicted me for Count Five on evidence labelled Exhibit 49A, supposedly a letter sent from my insurance adjuster to an adjuster who no longer worked for any of the insurance company defendants in my civil case since October 19, 1977; three months before he allegedly received the letter on January 24, 1978. I say this because this letter was supposedly sent from one person to another, each knowing full well of the other's employer, the spelling of the other's name and other important information. However, this Exhibit 49A was sent to a Mr. Derrung. The actual person was Mr. Perrone. The company name was spelled wrong (Curly vs.

Curley) and contained the wrong word (Bureau vs. Company). This Exhibit 49A had no letterhead, no signature, nor a "received" stamp on it. It was addressed to a person who did not exist, at a company that did not exist, and no one ever testified that this letter was ever mailed. At trial, the prosecutor produced a letter and introduced it as Exhibit 12. Exhibit 12 is entirely different from the Grand Jury Exhibit 49A. It has a letterhead. It has pen marks, little dots, to make it look like it had a signature. No one ever testified that they signed this letter or sent it in the mail. In fact, it looked like a letter that someone had cut and pasted a letterhead on and made a copy. Exhibit 12 had a received stamp on it. Another letter for another count had a received stamp on it. I do not stand convicted on this Count (Six). The same evidence, but not the same result. One is wrong. I think the result on Count Five is.

For years I have struggled through my investigation and have fought on every conceivable ground with a series of lawyers. We have alleged technical violations, factual and legal defenses, constitutional defenses and the like. I even have come to believe that, based upon all the inconsistencies of various legal decisions, perhaps there is a conspiracy to hide what no one wants to be made public. I have alleged such in the RICO case I am appealing. I think each lawyer failed to see the whole picture. I did not hire the prosecutor's witnesses to burn the movie theatre, yet by some twist of the system I stand convicted of this crime. This set of circumstances has led to this Petition.

ARGUMENT

I. The United States Court of Appeals for the Third Circuit erred in denying Petitioner Joseph Alberici's request

for a Writ of Error Coram Nobis.

A. The evidence was insufficient to prove use of the U.S. Mails, or to prove Petitioner knowingly used them. Petitioner has alleged and testimony below proves the following:

1. The ATF agent, Barry Lory, and Pennsylvania State Trooper, William DiGiamberdini, investigated and found no evidence of a destructive device.

2. ATF agent Lory and Pennsylvania State Trooper DiGiamberdini illegally searched and seized property from our building. They used this property later to falsify evidence for a trumped-up arson explosion in violation of our civil rights under the Fourth Amendment.

3. The Delaware County, Pennsylvania crime lab determined that a 55-gallon drum found at the scene contained a cleaning agent, and this report was given to agent Lory and DiGiamberdini.

4. No one from Ulmer & Company ever testified at trial that they sold naphtha or the alleged place of purchase of naphtha (that was never found at the scene).

5. Mr. Teplick, from Ulmer, could not identify the alleged arsonists, although it was alleged that Teplick sold the naphtha to them, and he was shown identification pictures of the alleged arsonists on several occasions. Mr. Teplick was excluded for allegedly violating sequestration.

6. The receipt from Ulmer was tampered with. Agent Lory indicated it was Receipt No. 1480; Mr. Teplick indicated it was Receipt No. 14840; and the receipt itself contained only 148.

7. There was no evidence of use of the U.S. Mails.

8. Exhibit 12 was not sent by certified mail.

9. There is nothing in the court record to indicate it was ever mailed.

10. Mr. Horowitz did not send the letter out, and he did not sign it. Mr. Horowitz testified at a deposition on February 12, 1988, that he did not authorize the letter to be sent, nor did he sign it. Mr. Horowitz's testimony was that the letter in question sends our claim. In regard to the effect of this "sends," see Hart, infra.

11. The conviction was purported to be reinstated based upon a charge of delivery. The statute requires knowing delivery, specific intent. No one in my family ever asked the letter be sent or knew it was ever sent.

12. There was a practice in the office of Bertram Horowitz to have documents personally delivered. This is particularly important where, as here, the recipient is so close to the sender.

13. Mr. Horowitz was not personally familiar with the custom and practice of mailing procedures at this office, Young

Adjustment Company. Besides, his testimony of the normal course of business of his company in August of 1977 was to mail these documents. The letter in question was sent out on January 23, 1978. No one testified concerning the normal course of business on that date. In all of these goings-on, our rights were trampled. The fact that no one testified that they signed or mailed the claim, and no one testified that they personally were familiar with and knew the office procedure, and that procedure was that all documents are mailed; that, in fact, the procedure was to have some things hand-carried (particularly in the same area of the City). All of these facts indicate that there is insufficient evidence of use of the mails. F.R.E. 602 and 801(c), the knowledge requirement of 803(6), and United States v. Hart, 693 F.2d 286 (1982), White Industries, Inc. v. Cessna Aircraft Co., 611 F. Supp. 1049 (1985).

B. Petitioner's right to due process was violated by withholding of information by the District Court and the Prosecutor that Petitioner's counsel was involved in a grant of immunity.

Petitioner has alleged and proven the following in the Courts below:

1. Petitioner's counsel was offered and accepted informal immunity in a matter relating to attorney's fees for one Willard E. Moran.

2. The Prosecutor and the District Court entertained Petitioner with a court appearance to determine if Petitioner knew this and was agreeable to his counsel's continued representation.

3. Petitioner's counsel objcted to the hearing.

4. The judge misled Petitioner at the hearing, telling petitioner that (i) the manner involved a dispute over fees, (ii) the judge did not know who the other client was,

and (iii) there were no adverse reflections on Petitioner's counsel. This was all lies.

5. Mr. Moran was a convicted murderer.

6. Mr. Tinari, Petitioner's counsel, took a transfer of cash from an organized crime figure across state lines. The person who paid Mr. Tinari was later found guilty along with another organized crime figure of hiring Mr. Moran for the murder of John McCullough, head of the roofers union in Philadelphia.

7. Judge Pollak knew the other client.

8. Judge Pollak knew that the Grand Jury matter for which Mr. Tinari was offered and accepted immunity involved a related matter, but the judge told Petitioner that he had no ground for thinking that Mr. Tinari was anything but faithful.

9. Judge Pollak knew that the other Grand Jury matter involved a Ralph Natale,

one who was alleged to be involved in my criminal case.

10. The Prosecutors knew of all of this but failed to so state when asked.

11. Natale was involved with the alleged arsonists. With Mr. Tinari involved with so many crime figures who were intertwined with this case, and with the FBI and the trial judge and Prosecutor aware of it, how could Petitioner ever get a fair trial with Tinari as counsel?

12. The Court of Appeals agreed with me that all of this posed a conflict of interest, but then they said I abused the remedy. I think they mean I should have known sooner.

C. The Government had a conflict of interest in prosecuting me.

1. David R. Strawbridge, Esquire, was the Assistant U.S. Attorney who issued the Grand Jury subpoena to me. I appeared and made a statement, at the law offices of

Cozen, Begier and O'Connor, because they were representing the insurance companies. Shortly thereafter, Strawbridge joined the Cozen firm. Then Karl Lunkenheimer, who was active in the insurance company defense, went to work as an Assistant U.S. Attorney. Also, in 1988 Michael Baylson, associated with the firm of Duane, Morris & Heckscher, the insurance companies' attorneys since 1984, was recommended by U.S.Senator Arlen Specter for appointment as a U.S. Attorney in the Eastern District of Pennsylvania. This recommendation was approved by John McNichol, Delaware County and The Eastern District's most influential Republican boss. Mr. Baylson is no longer in that position. Besides, Mr. Baylson was Senator Specter's re-election Campaign Tresurer in 1986, raising money and using the law firm's time. It looks like the government was prosecuting me for the insurance companies and exchanging lawyers between them to aid in the process.

The Cozen firm was forced to withdraw from the matter for their grossly despicable actions and conflicts of interest. I think the government should be conflicted out too.

D. The indictment was improperlyframed, grossly in error, legally insufficient, and fraudulent.

1. Quaker State Mutual Group and Eastern Mutual Insurance Company insured the theatre but no claims were made against them. They were included in the indictment to inflame. It permitted the Prosecutor to be able to refer to a "cool half million." The judge should have charged the jury not to include reference to them in their deliberation, and no reference to these two insurance companies should have been permitted. If the reason they were permitted was because my lawyer didn't object, then my lawyer was negligent for not objecting. Taking all of this into consideration, and referring to the indictment, paragraph 4(P),

our claims against Insurance Placement Facility, General Accident Insurance Company and Safeguard Mutual Insurance Company amount to only $159,730.70. This figure is not even close to a "cool half million," and the reference thereto was made only to inflame the trial jury.

2. Mr. DiTizio's trial testimony contained repeated denials that he ever talked to Petitioner Joseph Alberici over the telephone. This contradicted the serious and false charge as set forth in the scheme of the indictment. He was the person the trial judge found to be indispensable to my conviction. This was just after noting that he (the Judge) could not say he would have found as the jury did.

3. The government intimidated then plea bargained the witnesses' testimony in exchange for deals on charges not related to the Petitioner. These witnesses would have said anything to make a deal.

4. I was never charged with arson. (The Pennsylvania Superior Court also found that I could have been convicted without there ever having been a determination that I committed arson. This was in connection with my appeal concerning the state case for insurance proceeds, discussed infra).

5. Count One and Count Three both relate to Safeguard. If Count One and Count Three were set aside, how can Count Five, which relies on Count One, and the Count One Insurance Company still stand? Especially since Count Five, which includes Curly Adjustment Co., Perrone and Derrung, on this intangible and irrelevant letter copy, is not even mentioned in the indictment scheme of Count One. Nor are they mentioned in the Count One, Paragraph 4(p).

6. Judge Pollak fatally and grossly erred in reconsidering the Prosecutor's Motion to Vacate Order of New Trial. Judge Pollak, after the alleged "reconsideration"

found me guilty of Count Five only, based upon Exhibit 12 and not Exhibit 49A, the most insignificant, intangible, and irrelevant mail fraud count of the six-count indictment. Judge Pollak had a moral and ethical duty to exercise his judicial prudence and scholarly experience. He was bound to thoroughly review and analyze the indictment, its scheme, Grand Jury Exhibit 49A and Trial Exhibit 12. Judge Pollak neglected to do this because if he did do this he would have noticed that I was not charged two additional counts for Eastern Mutual and Quaker State insurance companies. He also erred when he allowed the Prosecutor, in her opening statement, and another Prosecutor, in his closing statement, to refer to these two insurance companies. All of this had the effect of placing evidence of trial on eight counts, when the scheme of the indictment mentions only three insurance companies for four counts. In failing to instruct the jury

in this regard, Judge Pollak erred. The facts here leave very little doubt as to why all of the mail fraud evidence is missing from Judge Pollak's chambers, the U.S. Attorney's office and the ATF Washington Bureau.

The indictment was drawn in a way to deceive and inflame the jury. Petitioner also believes that an inept scrivener prepared it. Counts Five and Six, by any reasonable look at the indictment, should have referred to Quaker State and Eastern Mutual. But we didn't make claims against those companies. In addition, I think the letter which was submitted in Count Five was fabricated. The indictment was not proved by the trial evidence, and the evidence which was used was deceitfully substituted at trial to make it look worse for us.

E. Counsel was negligent for not objecting to the substitute.

1. Counsel did not object to the

substitution of Exhibit 12 for Exhibit 49A.

2. Petitioner did not sign the stipulation for use of Exhibit 12 in substitution for Exhibit 49A. Why would I ever do that anyway?

3. The substitution of Exhibit 12 for Exhibit 49A, now with a received stamp and a letterhead, at such a late stage in the proceedings, deprived me of meaningful confrontation and cross-examination of witnesses. This having been the case, Stirone v. U.S., 361 U.S. 212 (1960) requires a finding of reversible error. See also, U.S. v. Maselli, 534 F.2d 1197 (1976), U.S. v. Goldstein, 502 F.2d 526 (1974), Gaither v. U.S., 413 F.2d 1061 (1969), Ex Parte Bain, 121 U.S. 1 (1887). The decision in my case creates a dichotomy between decisions of different circuit courts of appeals.

This also trampled our rights under the Fifth Amendment and Sixth Amendment, in that the government did not amend the indictment

but introduced evidence which provied materially different facts. See, U.S. v.Cusmano,659 F.2d 714 (1981).

F. The Trial Judge entered the jury room and tainted the jury in violation of the sanctity of jury deliberations.

1. Judge Pollak entered the jury room at 0955 on January 19, 1983.

2. No transcript preserves what was said.

3. Counsel was not present.

4. The proper procedure is to bring the jury into the courtroom for instructions.

5. The jury reached a verdict of guilty shortly after the judge entered the jury room.

6. At Bertram Horowitz's deposition on February 12, 1988, and later, for the 1978 civil case, Plaintiffs discovered that the principal issue in all the litigation, which is Count Five, is false, fraudulent and fabricated.

For all of the foregoing reasons, my conviction on Count Five must be reversed.

7. Judge Rita Prescott held ex parte communications where our counsel was excluded, both in person and by telephone, with the U.S. prosecutors and at a hearing for discovery. After this ex parte conversation, Judge Prescott continued this matter. No evidence was presented to justify the continuances. The prosecutors failed to respond to several rules to show cause why the matter should not proceed.

II. The Government's Prosecution Was Tainted By Its Failure To Disclose Exculpatory Evidence, By Its Coercion of Government Witnesses and By Its Casual Amendment of the Evidence.

A. The prosecution of Defendant was tainted by the government's failure to disclose certain exculpatory evidence, by its blatant arm-twisting of government witnesses,

and by the process of changing evidence during the investigatory stages of the case to fit its needs as follows:

1. The reports used by certain federal and other crime agencies werenot made available to Defendant.

2. The reports issued and used as evidence, such as the reports of the Bl-County Crime Lab and the Bureau of Alcohol, Tobacco and Firearms Laboratory, are lacking in substantive value in that the reports fail to distinguish between gasoline and naphtha or the amounts of gasoline and naphtha found. Further, the reports fail to show normal percentages of naphtha found in rugs or the atmosphere. Moreover, the ATF Lab relied on ATF Agent Barry Lory's March 27, 1979, report requesting that a Title XI Determination Report (Explosive) be made based on his false hearsay report that the quantity of naphtha, maximum 110 gallons, minimum 75 gallons, was used for the Jerry Lewis Theater fire (FOIA,

p. 26). Also, at this point in time the government did not know anything about Ulmer & Co. and Teplick. Lory allegedly interviewed Teplick on June 4, 1979.

3. When Fardella appeared recalcitrant to testify the way the government wished, it filed a Dangerous Special Offender Petition against him and the U.S. Attorney misled Petitioner's attorney on the status of this matter on December 28, 1982.

4. Charles Allen's statements of September18, 1978, and October 7, 1978, stated he and Fardella did the alleged arson and did not even mention DiTizio.

5. Allen, the government, and Fardella stated many times that only Allen and Fardella were involved in setting fire to the Jerry Lewis Theater on August 6, 1977, FOIA pp. 20, 22, 25, 28,29 and 57. Also, Allen Memorandum of Agreement dated December 31, 1978 and Allen's information pleading

filed with the Court on February 4, 1980, and Fardella's polygraph examination on September 24, 1981.

6. On December 18, 1981, DiTizio filed a motion for trial severance from Fardella, because Fardella had exculpated him at the August 14, 1981, meeting and at the September 24, 1981 polygraph.

7. On December 23, 1981, the government answered DiTizio's severance motion and admitted that Fardella had exculpated DiTizio.

8. On January 4, 1982, AUSA Wehner sent Burton Rose, DiTizio's court-appointed attorney, a letter saying Fardella stated "that he and Charles Allen committed the arson at the Jerry Lewis Theater at the direction of Allen and that no third person was involved."

B. Judge Pollak granted DiTizio the trial severance on January 18, 1982, and in his memorandum he gave four specific reasons

why he granted the severance.

1. Wehner's August 10, 1981, agreement letter to Mr. Simon, Fardella's attorney.

2. Fardella's September 24, 1981, polygraph exculpating DiTizio.

3. Wehner's January 4, 1982, letter to Mr. Rose exculpating DiTizio.

4. Fardella would not exculpate DiTizio and inculpate himself.

C. Fardella in his testimony of January 10, 1983 stated that: "One other person was present when the arson was performed on August 6, 1977, Charles Allen. No other person was present." pp. 60-61. This conforms with Fardella's statement to the government on August 14, 1981, FOIA, p. 56, and AUSA Wehner's statement in his letter to Burton Rose, DiTizio's attorney on January 4, 1982. Fardella: "I saw DiTizio one time when I came from the federal institution to be arraigned, and he was sitting in the back

of the courtroom, and I was told through my attorney that this is Mr. DiTizio." And but for someone telling you, you would not even recognize him today; isn't that correct? Fardella: "Correct." pp. 90-91. Fardella: They wanted me to testify on the Jerry Lewis Theater, and at that time they had five names - I think it was either four or five names they had down, which one was mine, and Charles Allen, and Ralph Natale. "Well, the other names I didn't even know, never met them people in my life." p. 112. Mr. Wehner: "When that statement was taken by myself and Ms. Epps you did not tell the truth at that time; isn't that correct? Fardella: "No." p. 115.

D. In an early statement to Agent Lory, William Merrill, III and Gladys Merrill, his mother, and William Merrill, his father, stated that the persons at the theatre were in their twenties, and when shown a photo spread containing Fardella, DiTizio and Allen

they were unable to identify them. They were not called at trial to identify either Allen, Fardella or DiTizio, even though Fardella, DiTizio and Allen were present or in custody. This fact was never communicated to defense counsel and their statements were not turned over to the defense until February of 1985.

1. Mr. Merrill did not see any drums being put into the threatre or removed from the theatre.

2. The salesperson at Venuti's Hardware saw pictures of the alleged arsonists and could not identify them as parties who bought tools in his store, which tools were found at the fire scene.

3. Mr. Teplick also failed to identify the alleged arsonists.

4. The Honorable Louis Pollak, Trial Judge, was involved in the processes of pleas changes and other stages of the prosecution against DiTizio, Fardella and Allen, which processes produced evidence which was so

divergent at times to be unbelievable and certainly not credible and he should have seen such inconsistencies.

5. The evidence of explosive agents such an naphtha and the alleged use of such was trumped up, manufactured and otherwise devised so as to give the court jurisdiction when in fact there were no explosives and no evidence of such.

6. The prosecution failed to disclose Jenks and Brady materials, thereby violating Petitioner's due process rights and depriving him of a fair trial.

III. The Court of Appeals Erred in Affirming the Dismissal with Prejudice Our Complaint in RICO, Civil Rights and State Law Claims.

A. Petitioners should have been permitted to amend the Complaint.

1. Dismissal of a complaint for failure to state a claim should be dismissal without prejudice, and plaintiffs should be

permitted to amend unless there is a determination that the allegation of other facts consistent with the challenged pleading could not possibly cure the deviancy. Sidebotham v. Robison, 216 F.2d 816 (1954).

2. Petitioners filed the Complaint pro se.

3. Sidebotham, supra, indicates that it is of no importance that no request to amend was made in the District Court.

4. The various participants engaged in extortion and other racketeering activity. This activity denied us our civil rights and our rights to due process.

A fair reading of the complaint indicates the above and shows what we now believe to be true. The complaint, as originally drafted without the aid of an attorney, did state claims for RICO, civil rights violations, defamation and infliction of emotional distress. If all of the formalities of pleading were not observed,

that's because we are not lawyers. It is important to mention that once I was convicted, we found it impossible to find a lawyer who would help us.

B. The statutes of limitation had not expired.

1. RICO claims accrue when the plaintiff knew or should have known of the elements of a RICO action, and the claim must be brought within four years of that date. Agency Holding Corporation v. Malley-Duff & Associates, Inc., 483 U.S. 143 (1987).

2. The District Court concluded that Petitioner's claim accrued not later than January 8, 1985 (the date I filed the motion for new trial based upon new evidence, the chemist's report that the government's witnesses could not have burned any building the way they said they did).

3. We believe that the cause did not accrue until the Petition for Coram Nobis is, if it is, denied certiorari. Until then the

conviction is not final.

4. The civil rights claims have two year statutesof limitation, but actions as late as August, 1992 occurred to violate our civil rights and the claim was filed in 1991.

5. Darby Borough of Delaware County Pennsylvania, under the complete political power and control of Mr. McNichol and his political associates, between June 18, 1990 and December 5, 1990, issued 27 citations and warrants for the fraudulent and intimidating false arrest of Joseph Alberici. This was done with the intentional misrepresentation to force appellants to drop or settle our civil action for a ridiculous sum of money. Besides, a false hearing was held on February 11, 1991. My brother's attorney had many factual and notarized documents attesting to the fact that I had nothing whatsoever to do with the charges on the citations and warrants. I also testified I had nothing to do with my brother's business since 1972, and

no one informed me of the defamatory and false citations and warrants circulating around the county by Pennsylvania State Constables. The citations and warrants were all issued by the Commonwealth of Pennsylvania. Regardless of this, the District Judge, after considering the case and evidence for two weeks, intentionally, for his political superiors, found me guilty on February 27, 1991.

6. Later, I received a letter through the mail dated February 27, 1991 attempting to extort $5,390.50 from me. This is a factual mail fraud.

7. Delco Halls and Caterers through George Alberici, my brother, settled these false charges in the Court of Common Pleas on March 13, 1992, for $200.00 plus costs. An agreement was reached to delete my name, and my brother pled guilty.

C. The District Court erred in finding no basis for tolling the statute.

1. If, as a part of the same pattern of racketeering activity one suffers further RICO injury, or if further predicate acts occur, then the cause does not accrue until one should have known of the last act or last injury. Keystone Insurance Company v. Houghton, 863 F.2d 1125 (1988).

2. The Third Circuit Court concluded that the fact that the Court of Common Pleas in Delaware County, Pennsylvania granted summary judgment against us in our case against the insurance companies for the insurance proceeds was not further injury. The acts of alleged conspirators in seeking that grant of summary judgment by knowing use of a conviction alleged to be obtained by fraudulent means was not further predicate acts. We disagree and believe that as a matter of law they do constitute further injury and further predicate acts. These acts (knowing use of evidence of a conviction alleged to be obtained by fraudulent means)

are still continuing today, and they are further predicate acts. Furthermore, this decision was based on intentional criminal activity of misrepresentation and fraudulent lies contained in the insurance companies' memorandum of law which was filed five and one-half months late, while this case was on appeal in violation P.R.A.P. 311(e), 1921 and McAllonis v. Pryor, 448 A.2d 5, 6 Pa. Super. Court (1982).

D. These further predicated acts also serve the purpose of denying us our civil rights. My liberty has already been taken for fourteen and one-half months. Our money has been withheld and our reputations muddied for fourteen and one-half years. Each use of the conviction further deprives us of our rights, further damages our reputations, and causes us severe emotional distress and irreparable harm in violation of our rights to due process under the Fifth and Fourteenth Amendments.

1. Petitioners also suggest that, as stated by Justice Reed in United States v. Morgan, 346 U.S. 502, at 512-513, "(w)here a petitioner has fully served his prison term for a felony conviction, though the term has been served, the results of the conviction may persist. Subsequent conviction may have heavier penalties (or) civil rights may be affected." Appellant's civil rights are continuing to be affected. Even the defendants below admitted this when they argued that the outcome of this (RICO) case was predetermined by Joseph Alberici's conviction for mail fraud. Petitioners acknowledge this fact, and still allege that the conviction was obtained by false and fraudulent means, (the fabrication and knowing use of fabricated evidence). Appellants believe this resulted in our civil rights being trampled by the powerful, legal, judicial and political force, carried out by intimidation.

E. The following represents government actions since the date of the filing of our appeal to the Court of Appeals, which we believe further deprives us our civil rights and our rights to liberty and property as guaranteed by the United States Constitution.

1. Our Petition for Rehearing to the Appeals Court was denied on October 6, 1992. The denial was addressed to appellant Joseph Alberici and costs were attached to him.

2. On October 20, 1992, we filed a Supplemental Petition for a Rehearing. Our prior attorney on the same day received a telephone call from Ms. Jacobsen from the Office of the Clerk. This telephone call was apparently made for the purpose of informing counsel of our pro se filing, and to inform us that we made several mistakes in our filing. One was that my wife's name had to be removed. We believe the call was mde for the purpose of misinforming us in an effort

to deprive us of our rights.

3. In addition, I had a personal discussion with another employee at the Office of the Clerk, Mr. Baldus. Mr. Baldus glared at me and his complexion was as white as a ghost. Mr. Baldus said I have to remove my wife from the Petition for Rehearing because her name was not on the application for appeal. Mr. Baldus was very arrogant, and he was trying to intimidate me into dropping my wife as a party to the Petition for Rehearing. As I summarized above, all plaintiffs filed the appeal. No party appellee objected to the filing of the original appeal on behalf of all plaintiffs. Shortly after, I received a letter from Mr. Baldus admitting he made a mistake.

4. Ms. Jacobsen and Mr. Baldus conspired to intentionally misrepresent and lie to us and the court to intimidate us by the following actions.

5. Between October 20 and December

8, 1992, we received many strange and intimidating orders and letters from different persons with different costs against all appellees and their attorney because they claimed we filed a frivolous suit. This is ridiculous because they completely ignored several important issues we listed in our supplemental rehearing petitions. Besides, my wife won her 1978 civil action complaint four times in the Appellate Courts, twice in 1986 and 1987, and twice in 1991 and 1992.

6. Ms. Jacobsen sent notices to Appellees Barry J. Goldstein, Ulmer & Co., Inc. and Theodore Teplick to file affidavits by October 30, 1992, and then went further to recommend that other parties file for damages and costs by the same date. We believe this is improper for the court to recommend to appellees that they file for damages while we have a Motion for Rehearing of October 20, as supplemented by our filings of October 28 and

November 9, 1992 pending before this same court. Especially since the dismissal of our appeal was accomplished by Judgment Order dated October 6, 1992 which we received under the same cover letter which sent us the order denying damages and costs to Horowitz, Haas and Young.

7. Joseph Alberici is the only person who verified the facts alleged in the RICO Complaint. There were six other plaintiff parties, each of whom verified only that part of the complaint which recited names and addresses, and relationships to the businesses owned and operated by my family. They did not verify any other information. This was all clearly set forth in the Complaint.

8. F.R.A.P. 39 requires a bill of costs and an affidavit be filed within fourteen days after judgment. Ulmer & Co. filed for costs on October 15, 1992. Horowitz, Haas and Young Adjustment filed on

October 16, 1992. Tinari filed on October 9, 1992. Barry Goldstein filed October 19, 1992. Not one of these Movants filed the required affidavit. They were given damages anyway.

9. We later sought to recall a mandate regarding costs, and we were told we could do this by filing a notice of intention to seek certiorari. We filed this notice. On November 20, 1992, we received a letter from Kathleen Grady stating: "They will stay the issuance of the mandate pending the filing and disposition of a Petition for Writ of Certiorari. On December 8, 1992, we received an order allegedly signed by Chief Judge Slovitor, but sent to us by Ms. Jacobsen denying the recall of the mandate.

10. F.R.A.P. 39 requires a bill of costs and an affidavit be filed within fourteen days after judgment.

11. I question all the repetitive letters, orders and their signatures because

they are not signed by the same person, although they all say Dolores Slovitor. This was done with extreme bias, prejudice and intimidation, improper prompting and leniency. I do not believe the other two judges who sat on our appeal even know about these strange actions. I contribute this political three ring circus of tainted and improper pressure to the awesome political power of Mr. McNichol, Mr. Baylson and Senator Specter. I wonder which one of them or their politically connected underlings is responsible for Ms. Jacobsen's and Mr. Baldus' jobs.

12. All of the above is a retaliation against us because we fought for the right to include Mrs. Alberici in the reconsideration appeal against their strenuous, manipulating and intimidating actions. Our supplement to our Motion for Reconsideration of November 9 was completely ignored and never ruled on.

F. Chief Judge Dolores Slovitor and Judges Greenberg and Garth were selected to preside over the appeal in the RICO and civil rights case. Since the court denial of this appeal on October 6, 1992 to December 8, 1992, Judge Slovitor allegedly made several important decisions by herself. These strange and unusual decisions were contrary to the rules, harassing and intimidating because they strenuously objected to my wife being included in the appeal of the RICO and civil rights case. Judge Slovitor presided in two of my appeals en banc; once in 1984 and again in 1987. Both appeals concerned the wrongful conviction of Count Five, the related primary factor of all three cases being appealed to this court. Also, Judge Greenberg presided in one or two of my appeals en banc. Judge Slovitor presided in the civil rights appeal filed May 12, 1992. Somehow she was also selected to preside over my Coram Nobis appeal filed June 15, 1992.

This created a dilemma for her for she either had to decide in our favor or against us in both cases to avoid embarrassment.

1. Both the civil rights appeal and the Coram Nobis appeal briefs contained strong allegations of the above improprieties and many other improprieties with attached exhibits. We stressed the gross appearances of impropriety, partiality, conflict of interest, and bias by the same characters. Judge LaBrum, John McNichol, Judge Pollak, Duane, Morris & Heckscher, Michael Baylson and Senator Specter and their awesome political influence and power involved in these cases.

2. Moreover, before Judge Slovitor denied our reconsideration and supplement thereto, her colleagues in two different courts ruled on two separate cases which are relevant with respect to the appearance of impartiality. Hines v. Liggett Group, Inc., No. 92-5144, and Pfizer v. The Honorable

Judge Kelly, No. 91-1887. These cases tell me that a judge must recuse himself if an appearance of partiality or impropriety exists, regardless of the fact that there was no wrongdoing. Federal law is clear on this. Judges Greenberg, Alito and Aldisert decided Hines. The court en banc overruled the decision allowing Judge Sarokin to continue to preside over the objection of the tobacco industry. They stated: "a judge must recuse himself if an appearance of partiality or impropriety exists., Presiding on my cases in the past were Judges Slovitor, Greenberg, Stapleton and Mansman. Chief Judge Slovitor and Judges Greenberg and Garth presided over my RICO appeal, and Slovitor, Stapleton and Lay presided over the Coram Nobis appeal.

3. We had previously filed a pro se petition seeking the disqualification of Judge Pollak and the entire United States District Court for the Eastern District of Pennsylvania from participation in the

decision on my Coram Nobis petition. I mentioned the conflict of interest, misconduct and prejudicial actions which have the appearance of impropriety and partiality.

4. Besides, I mentioned U.S. Attorney Baylson's connection with Duane, Morris & Heckscher's law firm, and federal Judge Robert Kelly's improper granting of summary judgment against us in 1986.

5. Judge Pollak requested an affidavit for the Disqualification Petition. On April 10, 1990, an Affidavit for Disqualification of Judge Pollak and the entire Eastern District was filed by our attorney, Edward Harkins, Esquire. On the same day, we filed a Supplemental Petition to the Writ of Error Coram Nobis on Harter v. Reliance Insurance Co., 562 A.2d 330 (1989).

6. On April 20, 1990, Judge Pollak decided he had no authority to address questions of disqualification with respect to judges other than himself. He denied our

Motion for Disqualification. He could not decide whether all of the Eastern District should be disqualified. On July 6, 1990, Judge Pollak decided the motion had no merit with respect to himself. He further stated he had no authority to address the disqualification of all judges.

7. After the intentional delay of 21 months for a written order of denial on the Coram Nobis, Mr. Harkin's sent him a reminder. After another intentional delay of six weeks, I filed a Writ of Mandamus in which we mentioned our deep concern of U.S. Attorney Baylson and Judge Robert Kelly. Within seven days, Judge Pollak responded and said he never received our reminder letter. He then gave us his written order denying our petition. Again, Judge Pollak stated he had no authority to rule on the disqualification of all judges. Besides, he stated that he did not know the Coram Nobis petition and the January 13, 1992 letter was in his

possession.

8. The following persons are involved in all three cases: Assistant U.S. Attorneys Strawbridge and Lunkenheimer, the law firm Duane, Morris & Heckscher, U.S. Attorney Michael Baylson, Senator Specter, John McNichol and Judge Kelly.

9. The brief filed in our Coram Nobis appeal sought transfer to another venue because of the appearance of partiality and appearance of impropriety generated by the interaction of the various law firms, public officials and the courts involved.

10. The Appeals Court granted removal of two judges in two separate matters within five weeks of each other for much less improperiety than than of which we have complained. (Hines and Pfizer, supra.)

11. Regardless of the dichotomy and conflict on rulings between the same courts and the rulings on our two appeals, Chief Judge Slovitor and Judges Stapleton and Lay

denied our Coram Nobis appeal on November 14, 1992. Besides, these judges granted us argument on the merits of the case then later denied us argument. The judges in the civil appeal did not grant us argument although we requested it. Judge Slovitor participated with Judge Stapleton in my request for hearing before the court en banc in 1987. The rehearing was for the denial of a section 2255 petition and the abuse of remedy ruling although they said I had new theories. The above improprieties mentioned obviously indicate that Judges Slovitor, Stapleton, Greenberg and Pollak should all have recused themselves for the obvious tainted appearances of impropriety and partiality, conflict of interest, bias and prejudice.

A. Harter, permits recovery of insurance proceeds by Petitioner Joseph Alberici.

B. Harter permits recovery if Petitioner's conviction includes a

determination that he would be guilty of arson.

C. The Superior Court has determined that my conviction for mail fraud did not include as a necessary condition an allegation of or proof of arson.

D. The Superior Court has determined the threshold question but has misapplied the corresponding law.

E. The Superior Court also noted that it appeared I was trying to fight my conviction in the civil case, but absent fraud, perjury or other error, they could not let me do it.

F. I have been arguing fraud, perjury and violations of my constitutional rights. No one is listening. The Supreme Court of Pennsylvania denied me allocatur. I need your help.

G. I have filed RICO, civil rights and other claims. I believe all of these cases are about the same thing, the violation of

our rights to due process, to liberty and property without due process of law. Our rights have been trampled because of the awesome legal and political power wielded by the respondents.

H. The Superior Court erred in ignoring our brief and hundreds of exhibits which indicate constitutional violations, a conviction obtained by fraudulent means and denying our Motion to Strike based upon Pennsylvania black letter law. This was all done without justification.

SHOULD THE JUDGES HAVE RECUSED THEMSELVES FROM THE OBVIOUS AND GROSS APPEARANCES OF IMPROPRIETY, PARTIALITY, CONFLICT OF INTEREST, BIAS AND/OR PREJUDICE AND THE INTERACTION OF THE JUDGES INVOLVED IN THE RELATED CASES AS FOLLOWS:

Judge Van Antwerpen erred when he denied the disqualification of U.S. Attorney Baylson and Duane, Morris & Heckscher. He also erred

in his decision to dismiss the complaint. Also, his biased remarks against me indicate his bias. (Judge Van Antwerpen, in reciting the case history, says I burned down a building. I never did any such thing, and no such thing has ever been alleged or proven.) He should have disqualified himself as soon as he agreed to accept Senator Arlen Specter's offer when he extended an olive branch offering of a prestigious elevation to the Court of Appeals during the time he was considering the merits of our case. Judge Van Antwerpen knew about the tainted influence of our opponents' connections from the pleadings on record and possible inquiries. He should have disqualified himself from presiding in this case because he knew the above created an appearance of impropriety, partiality, conflict of interest and bias.

Incredible and unreal. Political influence and pressure was applied for 14

years in our three cases. Besides the misconduct through the appearances of impropriety, partiality, conflict of interest, bias and/or prejudice and unlawful actions through intimidation and perjury, etc., it appears as if government officials, insurance companies, attorneys and politicians are "ABOVE THE LAW AND JUSTICE." This is a travesty of justice, a national disgrace and outrage. Also, the interaction of the federal district courts, courts of appeals, and court en banc is incredible and unusual and leaves much for the imagination to ponder over. All of this transpired under the color of law and justice against our civil rights.

CONCLUSION

For all of the foregoing reasons, we respectfully request that the Court grant Certiorari and review the Decisions of the Court of Appeals. The facts presented herein

compounded with many improprieties in the entire case history warrants a finding that our most fundamental rights were grossly violated.

Respectfully submitted,

Joseph Alberici

Theresa Alberici

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH ALBERICI and THERESA ALBERICI, Husband and Wife, et al., Plaintiffs,	:	Civil Action
vs.	:	
UNITED STATES GOVERNMENT DEPARTMENT OF JUSTICE, et al. Defendants	:	No. 91-4870

ORDER

AND NOW, this 13th day of March, 1992, upon consideration of the Motions for Summary Judgment, Motions for Judgment on the Pleadings, and Motions to Dismiss filed by the Defendants in this case, and having carefully considered Plaintiffs' replies to those motions, it is hereby **ORDERED** that each of the Defendants' motions is **GRANTED**, and the Complaint is **DISMISSED WITH PREJUDICE**. Accordingly, Plaintiffs' Motion for Default Judgment against David Soltz, filed January 30, 1992, is **DENIED AS MOOT**. This case is **CLOSED**.

BY THE COURT

/s/ FRANKLIN S. VAN ANTWERPEN
Franklin S. Van Antwerpen, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH ALBERICI and THERESA ALBERICI, Husband and Wife, et al.,	:	CIVIL ACTION
Plaintiffs,	:	FILED
vs.	:	MAR 23 1992
UNITED STATES GOVERNMENT DEPARTMENT OF JUSTICE, et al.	:	
Defendants	:	NO. 91-4870

AMENDED ORDER OF COURT

AND NOW, this 20th day of March, 1992, this Court's Order of March 13, 1992 is hereby **AMENDED** to include the following:

All outstanding motions are hereby **DISMISSED AS MOOT** at this time.

BY THE COURT

/s/ FRANKLIN S. VAN ANTWERPEN
Franklin S. Van Antwerpen, J.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 92-1258

JOSEPH ALBERICI, et al.

v.

UNITED STATES GOVERNMENT, et al.

Joseph Alberici,

Appellant

(E.D. Pa., Civil No. 91-04870 (FSVA))

Present: SLOVITER, *Chief Judge,* GREENBERG and GARTH, *Circuit Judges.*

ORDER

Following consideration of the motion by appellees, Bertram Horowitz, J. B. Haas and Young Adjustment Company, for damages and costs pursuant to Rule 38 of the Federal Rules of Appellate Procedure and the appellant's response, it is hereby ordered that the appeal was frivolous within the meaning of Rule 38. Inasmuch as the moving appellees have failed to file an affidavit by September 23, 1992 which sets forth such damages and costs as they choose, as required by the Court's order of September 9, 1992, the motion of these appellees for such damages and costs is denied.

By the Court,

/s/ D. K. SLOVITER

Chief Judge

Dated: October 6, 1992

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed. Costs taxed against appellant.

By the Court,

/s/ D. K. SLOVITER
Chief Judge

Attest:

/s/ SALLY MRVOS
Sally Mrvos, Clerk

Dated: October 6, 1992

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 92-1258

JOSEPH ALBERICI; THERESA ALBERICI,
Husband and wife;
LA CASA MIA, INC.; STUDIO 19;
VINCENT ALBERICI; ELIZABETH ALBERICI
(LA FAUCI); THERESA O'DONNELL

v.

UNITED STATES GOVERNMENT; DEPARTMENT OF JUSTICE; PETER F. VAIRA, ESQUIRE; DAVID R. STRAWBRIDGE, ESQUIRE; LUTHER E. WEAVER, ESQUIRE; STEPHEN V. WEHNER, ESQUIRE; JOANNE A. EPPS, ESQUIRE; DEPARTMENT OF TREASURY; BARRY F. LORY; DENNIS E. DUTCH; COMMONWEALTH OF PENNSYLVANIA; DEPARTMENT OF STATE POLICE; ATTORNEY GENERAL; WILLIAM L. DI GIAMBERDINI; DELAWARE COUNTY, PENNSYLVANIA; GEORGE T. LEWIS; KENNETH J. BOYDEN, ESQUIRE; SAFEGUARD MUTUAL INSURANCE CO.; BARRY J. GOLDSTEIN, ESQUIRE; PA. INSURANCE GUARANTY ASSOC.; GENERAL ACCIDENT FIRE AND LIFE INSURANCE CORP., LTD.; INSURANCE PLACEMENT FACILITY OF PENNSYLVANIA; J. KENNETH IVORY; QUAKER STATE MUTUAL GROUP; HOME MUTUAL INSURANCE COMPANY OF PENNSYLVANIA; COZEN & O'CONNOR; STEPHEN COZEN, ESQUIRE; YOUNG ADJUSTMENT CO.; BERTRAM HOROWITZ; ULMER & CO., INC.; THEODORE TEPLICK; JOSEPH T. LA BRUM, JR., JUDGE; RITA E. PRESCOTT, JUDGE; WILLIAM R. TOAL, JR., JUDGE; NINO V. TINARI, ESQUIRE; DAVID A. SOLTZ, ESQUIRE; DUANE, MORRIS & HECKSCHER; HUGH M. EMORY, ESQUIRE; MICHAEL

O'HAYER, ESQUIRE; LEONARD TRIGGIANI, SR.; LEONARD TRIGGIANI, JR.; BOROUGH OF DARBY, PENNSYLVANIA; THOMAS J. POWERS; J.B. (JOYCE BROWN) HAAS

SUR PETITION FOR REHEARING

Present: SLOVITER, *Chief Judge,* GREENBERG and GARTH, *Circuit Judges*

The petition for rehearing filed by Appellant Joseph Alberici in the above-entitled case having been submitted to the judges who participated in the decision of this court, and no judge who concurred in the decision having asked for rehearing, the petition for rehearing is denied.

By the Court,

/s/ D. K. SLOVITER
Chief Judge

Dated: November 5, 1992

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOSEPH ALBERICI 1753 Marilyn Drive Havertown, PA 19083 Petitioner	:	NO. 92-1247
v.	:	
UNITED STATES OF AMERICA United States Courthouse Sixth and Market Streets Philadelphia, PA 19106 Respondent	:	
and	:	
THE HONORABLE LOUIS H. POLLAK United States District Court Eastern District of Pennsylvania Sixth and Market Streets Philadelphia, PA 19106 Nominal Respondent	:	

ANSWER OF NOMINAL RESPONDENT LOUIS H. POLLAK TO WRIT IN MANDAMUS

I

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. It is admitted that a hearing was held on July 6, 1990. Following the hearing, nominal respondent Pollak rendered an opinion from the bench at the conclusion of which he stated:

> Accordingly, for the reasons recited I conclude that the petition of Mr. Alberici for a Writ of Coram

Vobis [*sic*] should be denied; and I will enter a written order to that effect.

6. It is admitted that nominal respondent Pollak is familiar with the case of petitioner Joseph Alberici.

7. It is admitted that petitioner's Writ of Error Coram Nobis raised several issues.

8. It is admitted that nominal respondent Pollak did not "enter a written order" denying petitioner Alberici's petition for a Writ of Error Coram Nobis, as nominal respondent Pollak stated he would at the close of the hearing on July 6, 1990. As noted in paragraph 5, *supra*, nominal respondent Pollak did render a bench opinion on July 6, 1990.

9. Admitted.

10. Nominal respondent Pollak is without information sufficient to form a belief as to the truth of the matter alleged.

11. It is admitted that petitioner Alberici filed a motion to disqualify all of the judges of the United States District Court for the Eastern District of Pennsylvania. Nominal respondent Pollak concluded that he was without authority to rule on the motion except as it related to him.

12. Nominal respondent Pollak is without information sufficient to form a belief as to the truth of the matter alleged.

II

Yesterday, April 6, 1992, there was for the first time brought to the attention of nominal respondent Pollak (1) petitioner Alberici's Writ in Mandamus, and (2) the letter of January 13, 1992, of Edward C. Harkin, Esq., counsel for petitioner Alberici, to nominal respondent Pollak. For his nearly three-month's non-awareness and non-acknowledgement of Mr. Harkin's letter, nominal respondent Pollak must take responsibility. On becoming advised of the filing in the Court of Appeals of the Writ of Mandamus, nominal respondent Pollak caused

an examination to be made of the records of the District Court in petitioner Alberici's case. That examination disclosed that (1) a hearing on Mr. Alberici's petition for a Writ of Error Coram Nobis was held on July 6, 1990, (2) the transcript of that hearing contains a bench opinion reviewing petitioner Alberici's contentions and concluding "that the petition of Mr. Alberici for a Writ of Coram Vobis [*sic*] should be denied." (A copy of the bench opinion, which constitutes pages 36 to 53 of the July 6, 1990 transcript, is annexed hereto as appendix A.) The transcript also discloses that nominal respondent Pollak then stated that he would "enter a written order to that effect." Such written order was not entered.

Pursuant to his discovery yesterday, April 6, 1992, that a written order had not been entered, nominal respondent Pollak has this day entered an order, *nunc pro tunc*, denying Mr. Alberici's petition for a Writ of Error Coram Nobis. (A copy of that *nunc pro tunc* order is annexed hereto as appendix B.)

/s/ LOUIS H. POLLAK
Louis H. Pollak

April 7, 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL
	:	
	:	FILED
v.	:	APR 07 1992
	:	
JOSEPH ALBERICI	:	NO. 82-267

MEMORANDUM/ORDER

POLLAK, J. APRIL 7, 1992

On July 6, 1990, a hearing was held on the petition of Joseph Alberici for a Writ of Error Coram Nobis. Following the arguments of counsel, a bench opinion was presented at the close of which the court stated:

> Accordingly, for the reasons recited I conclude that the petition of Mr. Alberici for a Writ of Coram Vobis [*sic*] should be denied; and I will enter a written order to that effect.

The written order denying Mr. Alberici's petition was never filed. Accordingly, to remedy that deficiency, it is hereby ORDERED and DIRECTED, *nunc pro tunc*, that the petition of Joseph Alberici for a Writ of Error Coram Nobis is DENIED for the reasons stated from the bench on July 6, 1990.

/s/ POLLAK
POLLAK, J.

APRIL 7, 1992

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 92-1295

UNITED STATES OF AMERICA

Appellee

v.

JOSEPH ALBERICI

Appellant

On Appeal from the United States District Court
For the Eastern District of Pennsylvania
(Criminal Action No. 82-00267-01)
District Judge: Honorable Louis H. Pollak

Submitted Under Third Circuit Rule 12(6)
November 3, 1992

BEFORE: SLOVITER, Chief Judge, STAPLETON, and LAY, Circuit Judges

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JUDGMENT ORDER

After consideration of the contentions raised by appellant, to-wit:

1. Whether the evidence was sufficient to prove use of the U.S. Mails where the conviction was based on testimony by a public adjustor representing appellant who said that the letter is one "that . . . sends our claim . . .";

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* Honorable Donald P. Lay, United States Circuit Judge for the Eighth Circuit, sitting by designation.

2. Whether the evidence which was presented at trial was different evidence than that presented to the Grand Jury and which was falsified by the government;

3. Whether the government's prosecution was tainted by its alleged failure to disclose exculpatory evidence, by its coercion of government witnesses, and by its casual amendment of the evidence;

4. Whether the government and the court below failed to adequately protect appellant's right to due process by not properly advising him of the involvement of his defense counsel in related matters, defense counsel's quest for immunity from the government, and the fact that his defense counsel was not able to function as an independent attorney so as to protect appellant's rights;

5. Whether the trial judge improperly tainted or interfered with the jury by entering the jury deliberation room during the jury's deliberation;

6. Whether the indictment against appellant was so legally insufficient, so improperly framed, and so grossly in error as to fail to prove either a scheme or to properly state any charges against appellant; and

7. Whether the government had jurisdiction to investigate the fire,

IT IS ORDERED AND ADJUDGED that the judgment of the district court be and is hereby affirmed.

By the Court,

/s/ WALTER K. STAPLETON
Circuit Judge

ATTEST:

/s/ SALLY MRVOS
Sally Mrvos, Clerk

DATED: NOV 24, 1992